

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**JEFFREY L FULWIDER
544 – 26TH ST
ROCK ISLAND IL 60201**

**L A LEASING INC
DBA SEDONA STAFFING
612 VALLEY DR
MOLINE IL 61265**

**Appeal Number: 04A-UI-02724-RT
OC: 01-18-04 R: 04
Claimant: Appellant (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant, Jeffrey L. Fulwider, filed a timely appeal from an unemployment insurance decision dated March 5, 2004, reference 04, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on April 2, 2004, with the claimant participating. Colleen McGuinty, Unemployment Benefits Administrator, participated in the hearing for the employer, L A Leasing, Inc., doing business as Sedona Staffing. The administrative law judge takes official notice of Iowa Workforce Development unemployment insurance records for the claimant. This appeal was consolidated with appeal number 04-aUII-03458-RT for the purposes of the hearing with the consent of the parties.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The employer is a temporary employment agency. The claimant received several assignments to Nestle Purina, the last of which prior to filing his claim for unemployment insurance benefits was a one-day assignment on December 30, 2003. The claimant satisfactorily completed that assignment. However, the claimant did not inform the employer of the completion of his assignment, nor did he seek reassignment until January 19, 2004. The employer has a rule that employees must notify the employer of the completion of an assignment and seek reassignment within three working days of the completion of the assignment. The employees are asked to sign this rule and are given a copy and the rule is contained in the employer's handbook, also a copy of which is given to the employee, and it is printed on the back of the employer's timecard. The claimant did not comply with that rule following the completion of his assignment with Nestle Purina on December 30, 2003. In fact, the employer attempted to call the claimant on January 2, 7, 12, and 15, 2004 but was unable to speak to the claimant. The employer left messages for the claimant, none of which he returned. The employer finally spoke with the claimant on January 19, 2004. Thereafter, the claimant has worked occasionally again at Nestle Purina. Throughout this period of time the claimant was occasionally not available for work. He helped his mother move out of state and returned there periodically to assist her in moving, and further was unavailable while seeking work or doing other things.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the claimant's separation from employment was a disqualifying event. It was.

Iowa Code Section 96.5-1-j provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department, But the individual shall not be disqualified if the department finds that:

j. The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm of completion of an employment assignment and who seeks reassignment. Failure of the individual to notify the temporary employment firm of completion of an employment assignment within three working days of the completion of each employment assignment under a contract of hire shall be deemed a voluntary quit unless the individual was not advised in writing of the duty to notify the temporary employment firm upon completion of an employment assignment or the individual had good cause for not contacting the temporary employment firm within three working days and notified the firm at the first reasonable opportunity thereafter.

To show that the employee was advised in writing of the notification requirement of this paragraph, the temporary employment firm shall advise the temporary employee by requiring the temporary employee, at the time of employment with the temporary employment firm, to read and sign a document that provides a clear and concise explanation of the notification requirement and the consequences of a failure to notify.

The document shall be separate from any contract of employment and a copy of the signed document shall be provided to the temporary employee.

For the purposes of this paragraph:

(1) "Temporary employee" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their work force during absences, seasonal workloads, temporary skill or labor market shortages, and for special assignments and projects.

(2) "Temporary employment firm" means a person engaged in the business of employing temporary employees.

The administrative law judge concludes that the claimant effectively voluntarily quit his employment when he failed to notify the employer of the completion of his last employment assignment with Nestle Purina within three working days of the completion of that assignment on December 30, 2003. The employer here is a temporary employment firm. The claimant was advised in writing of his duty to notify the employer upon the completion of an assignment and seek reassignment. He did not do so and has not demonstrated good cause for not doing so. Colleen McGuinty credibly testified that the claimant signed an application containing that rule and was given a copy of that rule and, further, the rule is set out in the employer's handbook and further is contained on the back of the employer's timecard. The claimant adamantly denied being familiar with this rule or being given any such documentation, but the claimant's denial is not credible. The claimant testified that he had no paperwork from the employer, and this is not credible. The claimant did add that he may have left the paperwork at the employer's location, implying that he may have received such paperwork. As a reason for not notifying the employer of the completion of his assignment and seeking reassignment, the claimant said that the employer was to call him; but later the claimant said that he was informed that he should call the employer himself when he was available and when he did not call the employer he was not available for work. The claimant cannot really have it both ways. There is also evidence that the employer attempted to call the claimant four times in the first half of January 2004, unsuccessfully.

Accordingly, and for all the reasons set out above, the administrative law judge is constrained to conclude that the claimant left his employment voluntarily when he failed to notify the employer within three working days of the completion of his last assignment with Nestle Purina, on December 30, 2003, after having been appropriately advised of that requirement. Therefore, the administrative law judge is constrained to conclude that the claimant is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless he requalifies for such benefits.

The administrative law judge notes that there was considerable evidence questioning the claimant's availability for work during the relevant times hereto. However, that issue was not set out on the notice of appeal and the administrative law judge does not have jurisdiction to decide that issue. The administrative law judge does not now believe that it is necessary to remand this matter for an investigation and determination as to whether and to what extent the claimant was available for work during relevant times here, but should the claimant receive unemployment insurance benefits for this period of time, such an investigation and determination must be made. The administrative law judge is not without sympathy for the claimant, who is seeking full-time work, but is having some difficulty. However, the claimant, once he sought the services of a temporary employment firm, must comply with the rules and

policies of that temporary employment firm and Iowa Code Section 96.5-1-j. The claimant did not do so.

DECISION:

The representative's decision dated March 5, 2004, reference 04, is affirmed. The claimant, Jeffrey L. Fulwider, is not entitled to receive unemployment insurance benefits until or unless he requalifies for such benefits.

b/b